

OCA 87-5997  
9 December 1987

for file

MEMORANDUM FOR: Chief, Logistics & Procurement Law Division  
Office of General Counsel

FROM: [redacted] Legislation Division  
Office of Congressional Affairs

STAT

SUBJECT: Capital Ownership Development Reform Act of 1987  
H.R. 1807

1. On 1 December 1987, the House passed the above-captioned bill, which is designed to stimulate competition by small businesses owned by socially and economically disadvantaged persons. Attached is a copy for your review. You may be particularly interested in sections 10 and 11 which amend what is currently 15 U.S.C. § 637. These sections pertain to the awarding of contracts, including sole source contracts.

2. This bill has been referred to the Senate Committee on Small Business, which may be acting on it next week. Should the Agency have problems with the bill and you wish us to seek a legislative remedy, please telephone me at your earliest convenience on secure [redacted] so that we can discuss these concerns.

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Attachment

Distribution:

Original - Addressee

1 - OCARead

1 - [redacted]

1 - OCA/Subject File: Procurement/Small Business

1 - RH/Signer

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lands carried out on the adjacent Nellis Air Force range. Because of the activities conducted on the Nellis Air Force range, it is essential that the lands covered by this provision be closed to unauthorized access or use. If this withdrawal is not renewed by December 31, 1987, the Air Force will have no legal authority to keep the public off of these lands.

It is for these reasons that the Armed Services Committee has agreed to allow this provision to be attached to the bill before us today and to support its passage. Although no hearings have been held on this particular provision of the bill, the committee is quite familiar with the issue and the provisions of the Military Lands Withdrawal Act of 1986. We believe that this is the best way to handle this withdrawal action and still meet the December 31, 1987, deadline. Attached to my statement is a copy of a letter from the Assistant Secretary of the Air Force supporting this provision and its inclusion in H.R. 2142 and I would ask that it also be included in the RECORD.

Finally, I urge my colleagues to support this legislation on behalf of the Committee on Armed Services.

DEPARTMENT OF THE AIR FORCE,  
Washington, DC, November 26, 1987.

Hon. Les Aspin,  
Chairman, Committee on Armed Services,  
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is to confirm the Air Force position on the Groom Mountain Land Withdrawal language in H.R. 2142, Nevada Wilderness Designation Act of 1987.

The language concerning the Groom Mountain Land Withdrawal is satisfactory and will accomplish the desired action of renewing the withdrawal and incorporating it into the Nellis Range legislation. We appreciate the support of the Committee on Interior and Insular Affairs in moving the legislation through the House of Representatives. We hope that you will support it as it comes before the House.

We do have some concern that H.R. 2142 might become stalled in the Senate. If this occurs, I may need to request your aid to complete the withdrawal legislation. If the Groom Mountain Withdrawal is not renewed before December 31, 1987, the Air Force will be placed in a situation of needing to control surface access to these public lands for vital national security considerations, but without the legal means to do so. That situation would be most difficult to deal with and could cause serious delays to extremely important classified projects.

Again, I appreciate your support in this matter.

Sincerely,

TIDAL W. MCCOY,  
Assistant Secretary of the Air Force  
(Readiness Support).

Mrs. VUCANOVICH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to thank both the gentlewoman from Nevada and the gentleman from Nevada for their cooperation and support in trying to exercise our responsibilities.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Hoyer). The question is on the motion offered by the gentleman from Minne-

sota (Mr. Vento) that the House suspend the rules and pass the bill, H.R. 2142, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

### CAPITAL OWNERSHIP DEVELOPMENT REFORM ACT OF 1987

Mr. LAFALCE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1807), to amend the Small Business Act to reform the Capital Ownership Development Program, and for other purposes.

The Clerk read as follows:

H.R. 1807

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Capital Ownership Development Reform Act of 1987".

#### SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the Capital Ownership Development Program administered by the Small Business Administration, and the award of contracts pursuant to section 8(a) of the Small Business Act to firms participating in such program, are intended to help socially and economically disadvantaged individuals enter the mainstream of the American economy;

(2) although some progress has resulted from the program, it has generally failed to meet its objectives, which remain as valid now as when the program was initiated;

(3) the Small Business Administration and some program participants have given insufficient attention and support to the business development goals of the program and instead has focused almost entirely on the size of contract awards or the number of firms certified to participate in the program; and

(4) it is necessary to reform substantially such program and provide for competition within the program in order to promote Congressionally mandated business development objectives and purposes of the program.

(b) PURPOSES.—It is, therefore, the purpose of this Act to—

(1) affirm that the Capital Ownership Development Program and the section 8(a) authority shall be used exclusively for business development purposes to help small businesses owned by the socially and economically disadvantaged to compete on an equal basis in the mainstream of the American economy;

(2) affirm that the measure of success of the Capital Ownership Development Program, and the section 8(a) authority, shall be the number of competitive firms that exit the program, without being unreasonably reliant on section 8(a) contracts, and that are able to compete on an equal basis in the mainstream of the American economy; and

(3) insure that program benefits accrue to individuals who are both socially and economically disadvantaged.

#### SEC. 3. BUSINESS DEVELOPMENT OBJECTIVES.

(a) TECHNICAL AMENDMENT.—Section 8(c)(2)(A)(v) of the Small Business Act is amended by striking "sole source".

(b) PROGRAM PURPOSES.—

(1) Section 8(c)(2)(B) of the Small Business Act is amended to read as follows:

"(B) It is, therefore, the purpose of the programs authorized by section 8(j) of this Act to—

"(1) foster business ownership and development by individuals in groups that own and control little productive capital; and

"(2) promote the competitive viability of such firms in the marketplace by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary."

(2) Section 8(c)(2) of the Small Business Act is amended to read as follows:

"(2) It is, therefore, the purpose of section 8(a) to—

"(A) promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete on an equal basis in the American economy;

"(B) promote the competitive viability of such concerns in the marketplace by providing such available contract, financial, technical, and management assistance as may be necessary; and

"(C) clarify and expand the program for the procurement by the United States of articles, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals."

#### SEC. 4. REQUIREMENTS OF THE CAPITAL OWNERSHIP DEVELOPMENT PROGRAM.

(a) BUSINESS PLANS.—Section 7(j)(1)(A)(i) of the Small Business Act is amended to read as follows:

"(i) assist small business concerns participating in the program to develop comprehensive business plans with specific business targets, objectives, and goals that are realistic and within the capability of both the program and the participating concern. Such targets, objectives, and goals shall be designed to result in a competitive small business concern by eliminating those conditions or circumstances upon which the Administration originally determined eligibility pursuant to section 8(a)(5);"

(b) TRAINING SESSIONS.—Section 7(j)(1)(A) is amended by—

(1) striking "and" at the end of clause (vi);

(2) striking the period at the end of clause (vi) and by inserting in its stead "and"; and

(3) by adding the following new clause:

"(vii) conduct training sessions to assist individuals and enterprises eligible to receive contracts under section 8(a) in the development of business principles and strategies to enhance their ability to successfully compete for contracts in the marketplace."

#### SEC. 5. EFFECT ON PRESENT PROGRAM PARTICIPANTS.

Section 7(j)(10) of the Small Business Act is amended by adding the following new subparagraph:

"(D) A small business concern participating in any program or activity conducted under the authority of this paragraph or eligible for the award of contracts pursuant to section 8(a) on the effective date of this subparagraph shall be permitted continued participation and eligibility in such program or activity for a period of time which is the greater of—

"(i) 9 years less the number of years since the award of its first contract pursuant to section 8(a); or

"(ii) its original fixed program participation term (plus any extension thereof) assigned prior to the effective date of this subparagraph.

Nothing contained in this subparagraph shall be deemed to prevent the Administra-

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tion from instituting a termination or graduation pursuant to subparagraph (F) or (G) for issues unrelated to the expiration of any time period limitation."

## SEC. 6. TERMINATION AND GRADUATION STANDARDS.

Section 7(j)(10) of the Small Business Act is further amended by adding the following new subparagraphs:

"(E) A small business concern participating in the program conducted under the authority of this paragraph and eligible for the award of contracts pursuant to section 8(a) shall be denied all such assistance if such concern—

"(i) voluntarily elects not to participate;

"(ii) has been a participant in the program for the nine-year time limit prescribed by paragraph (10);

"(iii) is terminated pursuant to a termination proceeding conducted in accordance with the provisions of 8(a)(9); or

"(iv) is graduated pursuant to a graduation proceeding conducted in accordance with the provisions of section 8(a)(9).

"(F) For the purposes of this Act the terms 'terminated' or 'termination' shall mean the total denial or suspension of assistance pursuant to this paragraph or section 8(a) prior to the graduation of the participating small business concern pursuant to subparagraph (G) or the expiration of the time limitation prescribed by paragraph (10). An action for termination shall be based upon good cause, including—

"(i) the failure by such concern to maintain a standard of program eligibility;

"(ii) the violation of any legal requirement by the concern regarding prohibited actions or the reporting of data; or

"(iii) the failure or inability of the concern to engage in business practices that will promote its competitiveness within a reasonable period of time.

"(G) For the purposes of this Act the term 'graduated' or 'graduation' shall mean the removal of a concern from the program and denial of contracts pursuant to section 8(a) due to such concern's substantial achievement of the targets, objectives, and goals contained in the concern's business plan and its demonstrated ability to compete in the marketplace without assistance under this paragraph or section 8(a)."

## SEC. 7. STAGES OF PROGRAM PARTICIPATION.

Section 7(j) of the Small Business Act is amended by adding at the end thereof the following new paragraph:

"(12) The Administration shall segment the Capital Ownership Development Program into three stages: a developmental stage; a transitional stage; and a mainstreaming stage. The developmental stage of program participation shall be designed to assist the concern to overcome its economic disadvantage by providing such assistance as may be necessary and appropriate to access its markets and to strengthen its financial and managerial skills. A small business concern in the developmental stage of program participation, if otherwise eligible, shall be qualified to receive the following assistance:

"(A) The award of contracts pursuant to section 8(a).

"(B) A maximum of two exemptions from the requirements of section 1(a) of the Act entitled 'An Act providing conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (49 Stat. 2036), which exemptions shall apply only to contracts awarded pursuant to section 8(a) and shall only be used to allow for contingent agreements by a small concern to acquire the machinery, equipment, facilities or labor needed to perform such contracts.

No exemption shall be made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of \$10,000,000. This subparagraph shall cease to be effective two years after the effective date of this paragraph.

"(C) A maximum of two exemptions from the requirements of the Act entitled 'an Act requiring contracts for the construction, alteration and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by additional bond for the protection of persons furnished material and labor for the construction, alteration, or repair of said public buildings or public works', approved August 24, 1935 (49 Stat. 993), which exemptions shall apply only to contracts awarded pursuant to section 8(a) of this Act, except that, such exemptions may be granted under this subparagraph only if—

"(i) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to such concern;

"(ii) the Administration assists, insofar as practicable, such concern to develop, within a reasonable period of time, its ability to obtain such bonds as the Administration may subsequently require for the successful completion of the program conducted under the authority of paragraph (10);

"(iii) the Administration finds that such concern is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue a bond subject to the guarantee provisions of title IV of the Small Business Investment Act of 1958; and

"(iv) the contract to which it pertains does not exceed \$10,000,000 in amount. This subparagraph shall cease to be effective two years after the effective date of this paragraph.

"(D) The transfer of technology or surplus property owned by the United States to such a concern. Activities designed to effect such transfer shall be developed in cooperation with the heads of Federal agencies and shall include the transfer by grant, license, or sale of such technology or property to such a concern without regard to any other provision of law. Such technology or property shall be used by the concern during the normal conduct of its business operations and shall not be sold or transferred to any other party (other than the Government) during such concern's term of participation in the program and for one year thereafter.

"(E) Financial assistance whereby the Administration may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns. Such financial assistance may be made without regard to section 10(a) of this Act, shall be made by way of reimbursement to the training provider, and shall have such adjustments as may be necessary to provide for overpayments or underpayments. For purposes of this subparagraph the term 'training provider' shall mean an institution of higher education, a community or vocational college or an institution eligible to provide skills training or upgrading under the Job Training Partnership Act. The Administration shall, in consultation with the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort. No financial assistance shall be granted under this subparagraph unless the Administrator determines that—

"(i) such concern has documented that it has first explored the use of existing cost-

free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development;

"(ii) no more than the employees or potential employees of such concern are recipients of any benefits under this subparagraph at any one time;

"(iii) no more than \$2,500 shall be made available for any one employee or potential employee;

"(iv) the length of training or upgrading financed by this subparagraph shall be no less than one month nor more than six months;

"(v) such concern has given adequate assurance it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period; if such concern, trainee, or upgraded employee breaches this agreement, the Administration shall be entitled to and shall make diligent effort to obtain from the violating party the repayment of all funds expended on behalf of the violating party; such repayment shall be made to the Administration together with such interest and costs of collection as may be reasonable; the violating party shall be barred from receiving any further assistance under this subparagraph;

"(vi) the training to be financed may take place either at such concern's facilities or at those of the training provider; and

"(vii) such concern will maintain such records as the Administration deems appropriate to ensure that the provisions of this subparagraph and any other applicable law have not been violated.

"(13) The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program. A small business concern in the transitional stage of program participation, if otherwise eligible, shall be qualified to receive assistance pursuant to this paragraph and subparagraph (D) of paragraph (12). In addition to the assistance described in the preceding sentence, a small business concern in this stage of program participation shall be eligible to receive contracts pursuant to section 8(a).

"(14) The Administration shall not, except as otherwise specifically provided for in this Act, provide any grant to any concern participating in the program established by paragraph (10) for the purpose of capital equipment acquisition, price differentials, capital improvements or any other purpose.

"(B) The Administration is empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under this paragraph or paragraph (14). Such assistance may be provided only if the Administration determines that—

"(i) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;

"(ii) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

"(iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material; or to supply such concern with working capital to

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be used in the manufacture of articles, equipment, supplies, or materials for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

"(iv) such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern.

"(ix) No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower from the fund established pursuant to (E) would exceed \$500,000.

"(M) Subject to the provisions of clause (i), in agreements to participate in loans on a deferred (guaranteed) basis, such participation by the Administration shall be not less than 85 per centum of the balance of the financing outstanding at the time of disbursement.

"(N) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

"(v) Financings made pursuant to this paragraph shall be subject to the following limitations:

"(i) No immediate participation may be purchased unless it is shown that a deferred participation is not available.

"(ii) No direct financing may be made unless it is shown that a participation loan is unavailable.

"(D) A direct loan or the Administration's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

"(i) that is subordinated by its terms to all other borrowings of the issuer;

"(ii) the rate of interest on which shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan and adjusted to the nearest one-eighth of 1 per centum;

"(iii) the term of which is not more than twenty-five years; and

"(iv) the principal on which is amortized at such rate as may be deemed appropriate by the Administration, and the interest on which is payable not less often than annually.

"(E) There is hereby established within the Treasury a revolving fund that shall be available to the Administration, without fiscal year limitation, for financing functions performed pursuant to this paragraph. All amounts received by the Administration due to loans made or participated in on an immediate or deferred (guaranteed) basis under this paragraph shall be deposited in the fund. All expenses, including administrative expenses, resulting from making or disposing of such loans by the Administration shall be paid from the fund.

"(F) There are hereby authorized to be appropriated to the fund established by subparagraph (E) such sums as may be necessary for carrying out the provisions and purposes of this paragraph relating to the making and servicing of direct, immediate participation, and guaranteed loans authorized by this paragraph. Unobligated funds previously appropriated for business development expense shall be transferred into the fund established by subparagraph (E).

"(G) The Administrator may, after consultation with the Attorney General and the chairman of the Federal Trade Commission, and with the prior written approval of the Attorney General, approve any agreement between a small business concern eligible for assistance under this paragraph and any other business (whether or not eligible for assistance under this Act) for a joint venture between such concern and such busi-

ness if the Administrator determines that such venture will enhance such concern's competitiveness and will strengthen the free enterprise system. The Administrator or the Attorney General may, at any time, withdraw approval of such agreement upon a finding that the agreement no longer carries out such purposes, except that no act or omission to act pursuant to or within the scope of such an approved agreement shall be construed to be within the prohibitions of the anti-trust laws or the Federal Trade Commission Act. All approvals and withdrawals made pursuant to this subparagraph shall be published in the Federal Register. No small business concern that enters into such a joint venture agreement shall be deemed to be other than a small business concern solely because it is a party to such agreement. Notwithstanding the provisions of this subparagraph, no joint venture formulated pursuant to this subparagraph shall be deemed eligible for the award of any contract or subcontract pursuant to sections 8(a), 8(d), 9, or section 15 if such joint venture would not have been eligible in the absence of such subparagraph. No agreement approved pursuant to this subparagraph shall be in effect for a period longer than a concern's remaining term of participation in the program, measured from the effective date of such agreement, plus an additional period of three years.

"(14) The mainstreaming stage of program participation shall be designed to incorporate a small business concern into the mainstream economy with the maximum practicable opportunity to become fully competitive. A small business concern participating in the mainstreaming stage of program participation, if otherwise eligible, shall be qualified to receive the assistance provided for by subparagraph (D) of paragraph (12) and the loan assistance established by paragraph (13). In addition to the assistance described in the preceding sentence, concerns eligible for assistance pursuant to this paragraph shall be eligible for the award of contracts pursuant to section 8(a) and such other management and technical assistance as the Administration may deem appropriate."

## SEC. 2. TIME LIMITATIONS.

Section 7(j) of the Small Business Act is further amended by adding the following new paragraph:

"(15) Notwithstanding any other provision of this Act, a small business concern shall not receive any assistance pursuant to paragraphs (10), (12), (13), or (14) or section 8(a) for a total period of longer than nine years, measured from the date of certification, of which—

"(A) no more than four years may be spent in the developmental stage of program participation established by paragraph (12);

"(B) no more than three years may be spent in the transitional stage of program participation established by paragraph (13); and

"(C) no more than two years may be spent in the mainstreaming stage of program participation established by paragraph (14)."

## SEC. 3. DATA COLLECTION.

Section 7(j) of the Small Business Act is further amended by adding the following new paragraph:

"(16) (A) The Administrator shall develop and implement a process for the systematic collection of data on the benefits derived by the economy and by socially and economically disadvantaged individuals as a result of the operations of the Capital Ownership Development Program established pursuant to paragraph (1).

"(B) Not later than April 30 of each year, the Administrator shall submit a report to the Congress on the Capital Ownership Development Program that shall include the following:

"(i) The average personal net worth of individuals who own and control concerns that were initially certified for the receipt of contracts pursuant to section 8(a) during the immediately preceding fiscal year. The Administration shall also indicate the dollar distribution of net worths, at \$50,000 increments, of all such individuals found to be socially and economically disadvantaged. For the first report required pursuant to this paragraph the Administration shall also provide the data specified in the preceding sentence for all eligible individuals in the program as of the effective date of this paragraph.

"(ii) A description and estimate of the benefits and costs that have accrued to the economy and the government in the immediately preceding fiscal year due to the operations of those business concerns that were performing work during such year as the result of any contract awarded pursuant to section 8(a). Such description and estimate shall take into account, but not be limited to, the employment and total sales of such concerns and the taxes and expenditures made by such concerns during such years as well as the costs associated with conducting the program and any other related expenses.

"(iii) A compilation and evaluation of those business concerns that have exited the Capital Ownership Development Program during the immediately preceding three fiscal years. Such compilation and evaluation shall detail the number of concerns actively engaged in business operations; those that have ceased or substantially curtailed such operations, including the reasons for such actions; and those concerns that have been acquired by other firms or organizations owned and controlled by other than socially and economically disadvantaged individuals. For those businesses that have continued operations after they exited from the Capital Ownership Development Program, the Administrator shall also separately detail the benefits and costs, as described in clause (ii), that have accrued to the economy during the immediately preceding fiscal year due to the operations of such concerns.

"(iv) A listing of all participants in the Capital Ownership Development Program during the preceding year identifying, by region, for each firm: the name of the concern; the race or ethnicity, and gender of the principal owners; the dollar value of all contracts received in the preceding year; the name of the awarding agency for each such contract; the dollar amount of advance payments received by each concern; and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (12), (13), and (14) during such year.

"(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to section 8(a) and such amount expressed as a percentage of total sales of (i) all firms participating in the Capital Ownership Development Program during such year; and (ii) of firms in each of the nine years of program participation.

"(vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next two-year period to serve the expected portfolio of firms certified pursuant to section 8(a).

"(vii) The total dollar value of contracts and options awarded pursuant to section

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(2a) at such dollar increments as the Administration deems appropriate, for each four digit standard industrial classification code under which such contracts and options were classified.

"(C) The first report required by subparagraph (B) shall pertain to fiscal year 1988."

#### SEC. 9. CONTRACT SELECTION APPEALS AND DOCUMENTATION.

(a) **APPEALS.**—Section 8(a)(1)(A) is amended by inserting immediately after "fail to agree" the following: "on either the terms and conditions of such contracts or on the selection of a particular procurement requirement to be let pursuant to this subsection."

(b) **DOCUMENTATION.**—Section 8(a)(1) of the Small Business Act is amended by adding at the end thereof the following new subparagraph:

"(D) The contracting officer shall document the appropriate contract file with the specific reasons and supporting facts in any instance when—

"(i) such officer's agency or department fails to award a contract pursuant to subparagraph (C) after negotiations had commenced; or

"(ii) when the Administration's request that a particular contract requirement be awarded pursuant to this subsection is denied."

#### SEC. 11. COMPETITIVE THRESHOLDS AND CONTRACT DISTRIBUTION.

Section 8(a)(1) of the Small Business Act is amended by adding at the end thereof the following new subparagraph:

"(EX1) Contracts to be awarded pursuant to this subsection shall be competed among responsible small business concerns participating in the Capital Ownership Development Program established by section 7(j)(10) if there is a reasonable expectation that at least two such concerns will submit offers at fair market prices, and the proposed award will likely exceed \$2,000,000 (including options) if for manufacturing, construction, services, or retail, and \$1,000,000 (including options) in all other cases.

"(H) The Administration shall ensure, to the maximum practicable extent, that—

"(i) a concern participating in the program established by section 7(j)(10) not receive a number or dollar amount of sole source contracts pursuant to this subsection that establishes an unreasonable reliance upon such contracts, pursuant to paragraph (15), to achieve such concern's business development objectives; and

"(ii) there is a fair distribution of available sole source contracts so that concerns in similar circumstances are treated equitably and that no concern receive a disproportionate number of awards if other similar concerns are available to perform a share of the available work.

"(H) The Administration and each agency participating in the competitive award of contracts pursuant to clause (i) shall develop a simplified procurement method that allows for the expedited receipt and evaluation of proposals.

"(iv) To the maximum extent practicable, the Administration shall promote the equitable geographic distribution of contracts awarded pursuant to this subsection."

#### SEC. 12. FAIR MARKET PRICE.

Section 8(a)(3) of the Small Business Act is amended to read as follows:

"(3A) Any small business concern selected by the Administration to perform any sole-source contract to be let pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

"(3B) For purposes of paragraph (1)(A) a 'fair market price' shall be based on reasonable costs under normal competitive conditions.

"(ii) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis conducted by the agency offering the requirement to the Administration. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis shall consider such cost or pricing data as may be submitted by the Administration and the small business concern selected by the Administration to perform the contract.

"(iii) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be formulated by the agency offering the requirement to the Administration and shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and material costs, overhead costs, and any other additional costs which may be deemed appropriate.

"(C) An agency offering a procurement requirement for potential award pursuant to this subsection shall, upon the request of the Administration, promptly submit to the Administration all information, studies, analyses, and other data used by such agency to estimate the current fair market price of such requirement. Such fair market price shall not be disclosed to any potential offeror (other than the Administration) prior to or during the negotiations for the award of such requirement.

"(D) A small business concern selected by the Administration to perform or negotiate a contract to be let pursuant to this subsection shall—

"(i) be entitled, upon its request, to a written statement detailing the method used by the agency to estimate the current fair market price for such contract; and

"(ii) within such time limits as may be prescribed by the Administrator, be entitled to protest the use of such method to the Administrator if such concern has reason to believe that the provisions of this paragraph have been violated. The Administrator shall consider such protest and shall have ten days from the receipt of such protest to render a final decision; if in the discretion of the Administrator the protest is sustained, an appeal shall be filed by the Administrator pursuant to section 8(a)(1)(A); the agency that is the subject of any appeal filed pursuant to such section shall not award the contract to any other party pending the disposition of the appeal unless the contracting officer determines, in writing, that an award must be made to protect the public interest."

#### SEC. 13. PROGRAM ADMISSION.

(a) **ELIGIBILITY OF PARTICIPANTS.**—Section 8(a)(4) of the Small Business Act is amended by adding the following new subparagraph:

"(C) Any individual upon whom eligibility is based pursuant to this paragraph, shall be permitted to assert such eligibility for only one small business concern. Notwithstanding the provisions of the preceding sentence, no individual who was determined pursuant to this subsection to be socially and economically disadvantaged before the effective date of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making applica-

tion for certification after such effective date.

"(D) No concern, previously eligible for the award of contracts pursuant to this subsection, shall be subsequently recertified for the award of additional contracts if its prior participation in the program was concluded for any of the reasons described in section 7(j)(10)(E).

"(E) A concern, eligible for the award of contracts pursuant to this subsection, shall remain eligible for such contracts if there is a transfer of ownership and control (as described in (A)) to individuals who would otherwise be considered socially and economically disadvantaged pursuant to this subsection. In the event of such a transfer the concern, if not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed nine years less the number of years since the award of its first contract pursuant to this subsection."

(b) **TAX CERTIFICATION PROCESS.**—Paragraph (8) of section 8(a) of the Small Business Act is amended to read as follows:

"(8A) All determinations made pursuant to paragraph (8) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development.

(B) Applications for certification pursuant to this subsection shall be processed within ninety days after the expiration of the time period designated pursuant to subparagraph (C). The applicant shall be advised, in writing, by the Administration of the date of receipt of the concern's application and shall be entitled, upon written request, to receive from the Administration a written list of those documents or omissions that need to be submitted or corrected in order to constitute a completed application. The Administration shall comply with such request in a timely fashion.

"(C) The Administration shall designate a sixty consecutive day period during each year during which it shall accept applications for certification pursuant to this subsection. Applications may only be accepted during such designated period, unless the Administrator determines, on a case-by-case basis, that a waiver should be issued to prevent an injustice to an applicant or potential applicant for the program.

"(D) Applications received during the sixty-day period specified in subparagraph (C) shall be processed in a manner that allows the Administration to determine, insofar as practicable, the industrial and geographic distribution of applicants, their relative potential to succeed in the program, and the availability of resources and contract opportunities to service the needs of new program entrants."

(c) **OUTREACH.**—Section 8(a)(10) of the Small Business Act is amended by adding at the end thereof the following: "Such program shall make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas."

#### SEC. 14. DUE PROCESS RIGHTS.

Paragraph (9) of section 8(a) of the Small Business Act is amended to read as follows:

"(9A) Subject to the provisions of subparagraph (E), the Administrator, prior to taking any action described in subparagraph (B), shall provide the small business concern that is the subject of such action, an opportunity for a hearing on the record, in accordance with chapter 5 of title 5, United States Code.

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"(B) The actions referred to in subparagraph (A) are—

"(i) a termination pursuant to section 7(j)(10)(F);

"(ii) a graduation pursuant to section 7(j)(10)(G); and

"(iii) the denial of a request to issue a waiver pursuant to paragraph (2)(B).

"(C) The Administrator's proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless it is found to be arbitrary, capricious, or contrary to law.

"(D) A decision rendered pursuant to this paragraph shall be the final decision of the Administration and shall be binding upon the Administration and those within its employ.

"(E) The adjudicator selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

"(i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administration's position;

"(ii) is untimely filed;

"(iii) is not filed in accordance with the rules of procedure governing such proceedings; or

"(iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

"(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within ninety days after a petition for a hearing is filed with the adjudicating office."

#### SEC. 14. CONTRACT REQUIREMENTS.

"(a) **CONTRACT FORECASTS.**—Section 8(a)(12) of the Small Business Act is amended by striking "contracts" and by inserting in lieu thereof "sole source and competitive contracts".

"(b) **RATE OF CONTRACT SUPPORT.**—Section 8(a) of the Small Business Act is amended by adding at the end thereof the following new paragraph:

"(15)(A) The business plan required pursuant to section 7(j)(10) shall contain an estimated dollar support level, approved by the Administration, of all contracts to be awarded pursuant to this subsection during each year of a small business concern's participation in the program established under section 7(j)(10). Such estimated level shall be known as the section 8(a) contract support level. For each year with such a support level, such concern shall also specify the anticipated total sales it expects to make without counting awards made pursuant to this subsection. The concern shall take such measures as may be appropriate and necessary to reach a goal of 85 per centum of total sales resulting from other than contracts awarded pursuant to this subsection by the end of the fifth year of such concern's participation in the program. By the last year of the mainstreaming stage of program participation, such goal shall be 75 per centum. The goals specified in the preceding two sentences may, in the discretion of the administration, be modified for those concerns that had participated in the Capital Ownership Development Program for a period of longer than three years on the effective date of this subparagraph. Subject to the requirements of subparagraph (B), the Administration shall assist each concern participating in the program to obtain the goals established by the preceding two sentences.

"(B) The requirements referred to in subparagraph (A) are—

"(i) no award shall be made pursuant to this subsection to other than a small business concern; and

"(ii) no award shall be made pursuant to this subsection if such award would cause the small business concern to exceed its approved 8(a) contract support level for the relevant fiscal year that was established pursuant to subparagraph (A).

"(C) The support level established pursuant to subparagraph (A) shall not, for any three-year period, be set at a level that would, by itself, cause the small business concern to exceed the applicable size standard for its primary industry if it actually was awarded such a level of contracts.

"(D) When implementing the requirements of subparagraph (C) for industries with size standards based upon numbers of employees, the Administration shall ascertain from the most recently available census data the average dollar value of receipts per employee in each such industry. The multiplication of such value by the relevant size standard shall be used to measure the compliance of such industries with the requirements of subparagraph (C)."

"(e) **CONTRACT MATCHING.**—Section 8(a) of the Small Business Act is further amended by adding at the end thereof the following new paragraph:

"(16) If a contract requirement is offered to the Administration for potential award pursuant to this subsection and the agency offering such requirement nominates an eligible small business concern to perform such contract, or if an eligible small business concern first identifies a contract requirement and causes the agency to offer such requirement to the Administration for award pursuant to this subsection, the Administration shall, in either event, designate such concern for the negotiation of such requirement, if—

"(A) the concern is a responsible contractor for such proposed award;

"(B) the award of the requirement would be in accord with the targets, objectives, and goals contained in such concern's approved business plan; and

"(C) the award would not exceed the amounts specified in subsection (a)(1)(EX)(i).

"(17) If contract requirements are offered to the Administration for potential award pursuant to this subsection, and eligible small business concerns are neither nominated for award nor identified as causing the agency to offer the requirements to the Administration, such requirements shall be equitably allocated by the Administration."

#### "(d) **SUBCONTRACT LIMITATIONS.**—

"(1) Section 8(a)(14) of the Small Business Act is amended to read as follows:

"(14)(A) A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees that—

"(i) in the case of a contract for services (except construction), at least 80 per centum of the cost of contract performance incurred for personnel shall be expended for employees of the concern; and

"(ii) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 80 per centum of the cost of manufacturing the supplies (not including the cost of materials).

"(B) The Administrator may change the percentage under clause (i) or (ii) of subparagraph (A) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category. A percentage established under the preceding sentence may not differ from a percentage established under section 15(c).

"(C) The Administration shall establish, through public rulemaking, requirements similar to those specified in subparagraph (A) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such subparagraph. The percentage applicable to any such requirement shall be determined in accordance with subparagraph (B), except that such a percentage may not differ from a percentage established under section 15(c) for the same industry category."

"(2) Section 15(c) of the Small Business Act is amended to read as follows:

"(c)(1) A concern may not be awarded a contract under subsection (a) as a small business concern unless the concern agrees that—

"(A) in the case of a contract for services (except construction), at least 80 per centum of the cost of contract performance incurred for personnel shall be expended for employees of the concern; and

"(B) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 80 per centum of the cost of manufacturing the supplies (not including the cost of materials).

"(2) The Administrator may change the percentage under subparagraph (A) or (B) of paragraph (1) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category.

"(3) The Administration shall establish, through public rulemaking, requirements similar to those specified in paragraph (1) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such subparagraph. The percentage applicable to any such requirement shall be determined in accordance with paragraph (2)."

"(e) **PAPERWORK REDUCTION.**—Section 8(a)(1) of the Small Business Act is further amended by adding the following new subparagraph:

"(F) The Administration shall, to the maximum extent practicable, minimize delay, eliminate excess regulation, and require only such paperwork as may be necessary to effect the orderly and efficient management of the program established by 7(j)(10) and the award of contracts pursuant to this subsection. The Administration shall make substantial and sustained efforts to achieve a maximum ten-day period as the average processing time for approving options and modifications to existing contracts awarded pursuant to this subsection and submitted to the Administration for approval."

#### SEC. 15. FRAUD, WASTE AND ABUSE.

"(a) **PROHIBITED ACTIONS AND EMPLOYEE RESPONSIBILITIES.**—Section 8(a) of the Small Business Act is further amended by adding the following new paragraph:

"(18)(A) No person within the employ of the Administration shall, during the term of that employment and for a period of two years after such employment has been terminated, engage in any activity of transaction specified in subparagraph (B) with respect to any concern that was certified pursuant to this subsection during such person's term of employment.

"(B) The activities and transactions referred to in subparagraph (A) are—

"(i) the buying, selling or receipt of any legal or beneficial ownership of stock or any



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other ownership interest or the right to acquire any such interest;

"(H) the making or carrying out of a written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (I); and

"(H) the receipt of any other benefit or right that may reasonably be considered an incident of ownership.

"(C) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 200 per centum of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions proscribed by subparagraph (B).

"(19)(A) Any employee of the Administration who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to this subsection or section 7(j), shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employee of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicited or directed.

"(B) Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action, imposed by the Administrator, which may consist of separation from service, reduction in grade, suspension, or reprimand.

"(C) Any person holding the position of Administrator or Deputy Administrator who willfully and knowingly violates subparagraph (A) shall be separated from service.

"(D) Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting certain political activity.

"(E) The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C), with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law."

(b) **REWARDS.**—Section 8(a) of the Small Business Act is further amended by adding the following new paragraph:

"(20)(A) Small business concerns participating in the program conducted under the authority of section 7(j)(10) and eligible to receive contracts pursuant to this subsection shall submit to the Associate Administrator for Minority Small Business and Capital Ownership Development at least once during each three-month period during such concern's term of participation—

"(i) a listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation from such concern to assist in obtaining Federal contracts for such concern; and

"(ii) the amount of compensation received by the parties identified pursuant to subparagraph (A) over the relevant reporting period and a description of the activities performed in return for such compensation.

"(B) Such Associate Administrator shall immediately report to the Inspector General of the Administration any suspicion of improper activity ascertained from a review of any report received under this paragraph.

"(C) The Associate Administrator shall report to the Committees on Small Business of the Senate and the House of Representatives the names of those concerns that have failed to submit a report under this para-

graph within thirty calendar days after such report is due."

(c) **CONTRACT PERFORMANCE.**—Section 8(a) of the Small Business Act is further amended by adding the following new paragraph:

"(21)(A) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed by the concern that initially received such contract. Notwithstanding the provisions of the preceding sentence, if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the government, except that no repurchase costs or other damages may be assessed against such concern due solely to the provisions of this subparagraph.

"(B) The Administrator may, as a matter of discretion and on a nondelegable basis, waive the requirements of subparagraph (A) if requested to do so prior to the actual relinquishment of ownership or control. In addition to the requirement of the preceding sentence, a waiver may only be given if one or more of the following conditions exist:

"(i) Exceptional circumstances evidence a manifest hardship on such socially and economically disadvantaged individuals, and the failure to give a waiver would substantially harm the public interest.

"(ii) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing."

(d) **CRIMINAL PENALTIES.**—Section 10(d) of the Small Business Act is amended—

(1) by striking "\$50,000" and inserting "\$500,000"; and

(2) by striking "five years" and inserting "ten years."

(e) **INSPECTOR GENERAL INVESTIGATIONS.**—Section 10(e) of the Small Business Act is amended by—

(1) inserting "and the Inspector General of the Administration" immediately after "Administration";

(2) inserting "(1)" immediately after "(e)"; and

(3) adding the following new paragraph:

"(2)(A) The Committee on Small Business of either the Senate or the House of Representatives may request that the Inspector General of the Administration conduct an investigation of any program or activity conducted under the authority of sections 7(j) or 8(a) of this Act. Not later than fifteen days after the receipt of such a request, the Inspector General shall inform the committee, in writing, of the estimated time needed to complete the investigation, or shall deny the request for good cause. If the committee's request is denied, the Inspector General shall provide the committee with a written and detailed explanation of the reasons for the denial within such fifteen-day period.

"(B) The Office of the Inspector General shall keep the committee duly informed of the progress of any investigation conducted pursuant to subparagraph (A) and shall furnish such committee, in a timely manner, a detailed written report of its findings, conclusions, and recommendations."

(f) **STATUS OF THE ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT.**—Section 4(b)(1) of the Small Business Act is amended by inserting immediately after "Associate Administrator for Minority Small Business and Capital Ownership Development" the following: "who shall be an employee in the competitive service or in the Senior Executive Service and a career appointee".

## SEC. 17. WORKING CAPITAL FUND.

Section 8(a) of the Small Business Act is further amended by adding the following new paragraph:

"(22)(A) An otherwise responsible business concern that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for any procurement contract for the supply of a product to be let pursuant to this subsection or subsection (a) of section 15 solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

"(B) To be in compliance with the requirements referred to in subparagraph (A), such a business concern shall—

"(i) be primarily engaged in the wholesale or retail trade;

"(ii) be a regular dealer, as defined pursuant to section 36(a) of title 41, United States Code (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government or be specifically exempted from such section by section 7(j)(12)(B); and

"(iii) represent that it will supply the product of a domestic small business manufacturer or processor, except that, the Administrator may waive the application of this clause, as it pertains to the furnishing of a product manufactured or processed by a small business, for any class of products for which there are no small business manufacturers or processors participating in the Federal market."

## SEC. 18. SUBCONTRACTING PROGRAM.

Section 8(d)(4)(E) of the Small Business Act is amended by—

(1) inserting "(1)" immediately after "(E)"; and

(2) adding the following new clause:

"(ii) Every contract to be awarded after the effective date of this clause and that is subject to the requirements of paragraph (4) or (5), shall contain a provision providing for liquidated damages in the event that the prime contractor fails to comply in good faith with the clause contained in paragraph (3) or with any plan required of such contractor pursuant to the authority of this subsection. The awarding agency shall ensure, by reviewing the past performance of the apparent successful offeror or bidder, that such bidder or offeror has not offered goals that are unreasonably below its actual past performance."

## SEC. 19. RELATIONSHIP WITH OTHER PROCUREMENT PROGRAMS.

Section 15(m) of the Small Business Act is amended to read as follows:

"(m)(1) Each agency subject to the requirements of section 1507 of Public Law 99-661 shall, when implementing such requirements—

"(A) establish policies and procedures that insure that there will be no reduction in the current number or dollar value of contracts awarded pursuant to this section and section 8(a) in order to achieve any goal or other program objective; and

"(B) implement such action 1207 in a manner that will not slow or change the procurement process used to implement this section or section 8(a).

"(2) All procurement center representatives (including those referred to in subsection (k)(6)), in addition to such other duties as may be designated by the Administrator, shall—

"(A) monitor the performance of the procurement activities to which they are assigned to ascertain the degree of compliance with the requirements of paragraph (1);

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(B) report to their immediate superiors all instances of noncompliance with such requirements; and

(C) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section, section 8(a), and section 1307 of Public Law 90-481.

(3) A business concern shall not be considered other than a small business concern for purposes of section 1307 of Public Law 90-481, solely because its receipts or number of employees exceed the applicable numerical size standard established pursuant to section 8 of the Act in effect as of October 1, 1967, unless such receipts or number of employees exceed such size standard by more than 25 per centum."

#### SEC. 20. STANDARD INDUSTRIAL CLASSIFICATION CODE LIMITATIONS.

Section 8(a)(7) of the Small Business Act is amended by—

- (1) inserting "(A)" after "(7)"; and
- (2) adding the following new subparagraph:

"(B) Limitations established by the Administration in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of standard industrial classification codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a participating small business concern into areas of industrial endeavor where such concern has the potential for success."

#### SEC. 21. DIRECTORS OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION.

Section 18(k) of the Small Business Act is amended by—

- (1) amending paragraph (3) to read as follows:

"(3) be responsible only to, and report directly to, the head of such agency or to the deputy of such head";

- (2) striking "and" at the end of paragraph (3);

(3) striking the period at the end of paragraph (7) and inserting in lieu thereof, "and"; and

- (4) adding at the end thereof the following new paragraph:

"(5) make recommendations to contracting officers whether a particular contract requirement should be awarded pursuant to subsection (a), section 8(a) or section 1307 of Public Law 90-481. Such recommendations shall be made with due regard to the requirements of subsection (a) and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file."

#### SEC. 22. REGULATIONS.

The Small Business Administration shall—

- (1) within 60 days after the date of enactment of this Act conduct meetings of present and potential participants in the program established by sections 7(j)(10) of the Small Business Act, as amended by this Act, to ascertain and consider public comment on the nature and extent of regulations needed to implement this Act;

(2) within one hundred and twenty days after the date of enactment of this Act, publish in the Federal Register proposed rules and regulations implementing this Act; and

(3) within two hundred and ten days after the date of enactment of this Act, publish in the Federal Register final rules and regulations implementing this Act.

#### SEC. 23. EMPLOYEE TRAINING AND EVALUATIONS.

(a) **TRAINING REQUIREMENT.**—No person within the employ of the Small Business Administration shall perform any of the principle functions of a Business Opportu-

nity Specialist as those functions relate to the provisions of the Act, unless such person first receives training on how to successfully operate the Capital Ownership Development Program and achieve its stated purposes. The provisions of the preceding sentence may be waived by the Administrator for new hires or those employees newly classified or assigned as a Business Opportunity Specialist except that, such waiver for any such hire or employee shall not extend for a period of longer than ninety days.

(b) **DUTIES OF BUSINESS OPPORTUNITY SPECIALISTS.**—An individual within the employ of the Small Business Administration who is designated to perform the functions of a Business Opportunity Specialist in addition to the duties and responsibilities specified in this Act, shall—

- (1) conduct contract negotiations on behalf of such Administration for contracts awarded pursuant to section 8(a) of the Small Business Act when performance will be rendered by one or more firms in such Specialist's assigned portfolio; and

(2) facilitate and otherwise assist such firms in negotiating for the receipt by them of any contract to be let pursuant to section 8(a) of such Act.

(c) **TRAINING RESPONSIBILITIES.**—The Administration shall take such actions as may be appropriate to train and qualify such Specialists to perform such negotiations.

(d) **PERFORMANCE EVALUATIONS.**—To the extent practicable, the Administrator shall ensure that the performance appraisal system applicable to a Business Opportunity Specialist affords substantial recognition to how well such Specialist's assigned portfolio of concerns participating in the program established by section 7(j)(10) of the Small Business Act are achieving competitiveness and furthering the business development purposes of the program.

#### SEC. 24. MISCELLANEOUS AND TECHNICAL PROVISIONS.

(a) **ANNUAL GAO REPORT.**—Section 7(j)(8) of the Small Business Act is amended by striking "January 1, 1961" and all that follows and by inserting in lieu thereof "January 1 of each year."

(b) **REPEALER.**—Section 105 of Public Law 90-481 is repealed.

(c) **INDIAN TRIBE EXEMPTION.**—Section 8(a)(1)(E)(i) of the Small Business Act, as amended by section 11 of this Act, shall not apply to concerns owned and controlled by economically disadvantaged Indian tribes as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act.

(d) **CONTINUATION OF COMPETITION FOR CERTAIN CONTRACT REQUIREMENTS.**—Notwithstanding any other provision of this Act, contract requirements that have been historically competed pursuant to section 8(a) of the Small Business Act before the effective date of this Act shall continue to be competed if—

- (1) such competition was based on price and other price related factors; and

(2) there is a reasonable expectation that at least two responsible small business concerns, eligible for the award of contracts pursuant to such section, will continue to submit offers at fair market prices.

(e) **UNPRICED OPTIONS.**—(1) Within sixty days after the date of enactment of this Act, the Small Business Administration, and the appropriate Federal agency, shall make substantial and sustained efforts to negotiate contract modifications for fair market price for any and all unpriced options contained in contracts previously awarded pursuant to section 8(a) of the Small Business Act with the contractor that was initially awarded such contract.

(2) During the period of time described in paragraph (1) such agencies shall refrain

from procuring such requirements from alternative sources except that no delay may be incurred pursuant to this paragraph that would cause substantial harm to a public interest.

(3) The Small Business Administration shall take appropriate actions, including publication in the Federal Register, to advise small business concerns and Federal agencies of the requirements of this subsection.

#### SEC. 25. AUTHORIZATIONS.

For fiscal year 1968, there is authorized to be appropriated \$4,735,000 to implement the requirements of section 23, 25 and 24 of this Act. Of the amount authorized to be appropriated—

- (1) \$725,000 shall be used for the hire of Procurement Center Representatives; and
- (2) \$2,765,000 shall be used for the hire of Business Opportunity Specialists.

#### SEC. 26. EFFECTIVE DATES.

Except as otherwise provided, this Act shall become effective one year after the date of enactment, except that sections 8, 12, 19, 20, 21, 22, and 23 of this Act shall become effective on the date of enactment.

#### SEC. 27. REVIEW OF COMPETITIVE TENDERS.

(a) **REPORT.**—Beginning one year after the date of enactment of this Act, and at intervals of one year thereafter for an additional period of two years, the Comptroller General of the United States shall transmit a report to Congress describing the results of detailed review, conducted by the Comptroller General, on the implementation of the amendments made by section 11 of this Act. Each such report shall pertain to the preceding twelve month period and shall contain—

- (1) a specific determination as to whether the implementation of section 11 has furthered the business development purposes of this Act; and

(2) such recommendations for competitive procurement techniques as may be necessary to advance such purposes.

(b) **TERMINATION OF SECTION 11.**—Section 11 of this Act shall cease to be effective one year after receipt of the last report required to be transmitted pursuant to (a) if—

- (1) the Comptroller General determines and reports that the implementation of section 11 has impeded the business development purposes of this Act; and

(2) a Joint Resolution of the Congress has been enacted agreeing with the findings of the Comptroller General and providing for a new or modified system to insure appropriate competition in the award of contracts pursuant to section 8(a) of the Small Business Act to commence one year after the receipt of the last report required by subsection (a).

The SPEAKER pro tempore. Is a second demanded?

Mr. McDADE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York [Mr. LaFalce] will be recognized for 30 minutes and the gentleman from Pennsylvania [Mr. McDade] will be recognized for 30 minutes.

The Chair recognizes the gentleman from New York [Mr. LaFalce].